REMARKS

Claims 1-40 were examined. Applicant has amended claims 24, 25, 27, and 32-40. Claims 26 and 30-31 are cancelled. No claims are newly presented. No new matter has been introduced.

Double Patenting Rejections

The examiner states that claims 26, 30 and 31 of this application conflict with claims 19, 22 and 23 of commonly owned application no. 10/540,912. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications.

Claims 26 and 30-31 are provisionally rejected under 35 USC 101 as claiming the same invention as that of claims 19 and 22-23 of copending application 10/540,912.

Claims 1-23, 25 and 27 are provisionally rejected on the ground of is nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of copending application no. 10/540,912.

Claim 24 is provisionally rejected on the ground of is nonstatutory obviousness-type double patenting as being unpatentable over claim 17 of copending application no. 10/540,912.

Claim 28 is provisionally rejected on the ground of is nonstatutory obviousness-type double patenting as being unpatentable over claim 21of copending application no. 10/540,912.

Claims 26, 30, and 31 are cancelled from the current application.

A terminal disclaimer is submitted to overcome the rejection of claims 1-25 and 28 over obviousness-type double patenting.

Rejections under 35 USC §112

Claims 5-8 stand rejected under §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5-8 are not use claims, as they further limit the device of claim 1 by claiming specific composition of "the analyte detecting member" as comprising "an emulsion of Ru sensing phase within a group of oxidase sensing."

Rejections under 35 US §103

Claims 1, 4-14, 17-18, 24, 32 and 33 are rejected under §103(a) as being obvious over Simons et al (US 6036924) in view of Lum (GB 2335990) further in view of Betts et al (US 5405510).

The prior art

Simons did not disclose at least a first element of "detecting members using an optical technique to measure analyte levels in said sample fluid." As the examiner pointed out, Simons discloses "material 218 around the aperture can be an absorbent material which serves to soak up blood alter lancing. The absorbent material, or the surface beneath it, can also serve as the active test area 220 for measurements of blood characteristics, such as glucose level. As in existing glucose measurement techniques, a chemical reaction occurs when blood contacts the test area 220, and thus, for example, indicates the presence and amount of glucose. The test area 220 can generate an **electrical signal that is conducted from the test area 220 (preferably via conductors molded into the case) to electrical contacts** (not shown) on the cartridge case 222 (col. 8, lines 19-29, Fig. 3A, emphasis added). Thus, Simons discloses analyte detecting member 220 that measures the amount of glucose in the blood using **electrical means**. There is no teaching in Simons of detecting members using an optical technique to measure analyte levels in the sample fluid

In addition, Simons did not disclose at least a second element of a cartridge having a radial disc shape. On the contrary, the test cartridge in Simons has either a generally thin and flat shape (FIGS. 1A and 1B) that permits several cartridges to be packaged (in a stack) in a small cassette, similar in design to existing dispensers of single-edged razor blades, or a bar-shaped cartridge (FIGS. 3A to 3D) that can be included in a cassette.

Neither Lum nor Betts discloses these two elements either.

The prior art distinguished

Independent claim 1 includes the language of:

said detecting members using an optical technique to measure analyte levels in said sample fluid.

Dependent claim 3 has the language of:

said cartridge has a radial disc shape.

Independent claims 24, 32, and 33 have been amended to include the language of:

a plurality of analyte detecting members using an optical technique to measure analyte levels in a sample fluid;

Since neither Simons, nor Lum, nor Betts discloses detecting members using an optical technique to measure analyte levels in a sample fluid, they alone or in combination cannot anticipate claims 1, 24, 32, and 33 or render them obvious. Since claims 4-14, 17-18 depend on claim 1, they are also allowable at least for depending from an allowable base claim. The Applicant respectfully requests all rejections with respect to these claims be withdrawn.

Allowable Subject Matter

Applicant thanks the examiner for the indication that claim 29 is allowed, and that claims 34-40, objected to as being dependent upon a rejected base claim, would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 34-40 have been amended in independent form to include all of the limitation of their base claim 33.

CONCLUSION

Applicant believes that the application is now in condition for allowance and respectfully requests the same.

The examiner is authorized to charge any fees due in connection with this paper to Deposit Account 50-4634 (PEL-2939).

Respectfully submitted,
GOODWIN PROCTER LLP

Date: 3.9.10

By: _____
Paul Davis, Reg. No. 29,294

135 Commonwealth Drive
Menlo Park, CA 94025
Tel: 650 752-3106
Customer No. 77845